

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 10-2072 JB

SALVADOR DE JESUS GUTIERREZ-CASTRO,

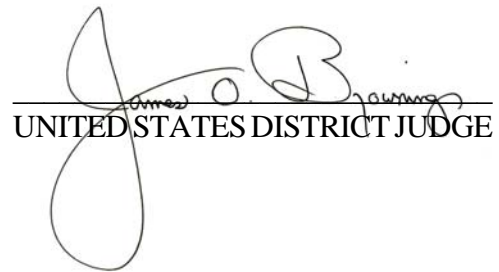
Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Motion in Limine and Objection to Defendant's Proposed Voir Dire, filed August 4, 2011 (Doc. 67). The Court held a hearing on August 8, 2011. The primary issue is whether the Court should issue an order prohibiting defense counsel from asking the following questions during voir dire about fingerprints and a recent report from the National Academy of Sciences that questioned the reliability of fingerprints and fingerprint analysis: (i) are you aware of the more recent National Academy of Sciences Report that has questioned the reliability of fingerprints and fingerprint analysis in criminal cases; (ii) what, if anything, do you know about this report; (iii) do you know that this report has questioned whether courts should allow expert testimony about fingerprints in criminal cases; (iv) what is your understanding about the uniqueness of fingerprints; and (v) what is your basis for such understanding and belief. The United States did not object to the last two questions. The jury will hear about fingerprints and the reliability of fingerprints and fingerprint analysis during Plaintiff United States of America's case-in-chief and during Defendant Salvador De Jesus Gutierrez-Castro's cross-examination of the United States' witnesses. Furthermore, the Court does not believe

it should micro-manage how Gutierrez-Castro's counsel presents his case and conduct voir dire. The Court believes it is fair game to ask the venire if it has heard of the report and see if the prospective jurors think of fingerprints as determinative as DNA evidence. If they think of fingerprints as conclusive evidence, Gutierrez-Castro may want to pursue for-cause challenges and, more likely, preemptory challenges. For these reasons, and the reasons stated on the record at the hearing, the Court will therefore deny the United States' motion in limine and overrule its objections to Gutierrez-Castro's proposed voir dire.

IT IS ORDERED that the Motion in Limine and Objection to Defendant's Proposed Voir Dire, filed August 4, 2011 (Doc. 67), is denied. The Court overrules Plaintiff United States of America's objections to Defendant Salvador De Jesus Gutierrez-Castro's proposed voir dire.



UNITED STATES DISTRICT JUDGE

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